

U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

May 26, 2021

MEMO ENDORSED

VIA ECF

The Honorable Katharine H. Parker
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: Levinson v. United States of America, Federal Bureau of Prisons, Metropolitan Corrections Center—New York, et al., 20-cv-7375 (VEC) (KHP)

Dear Judge Parker:

This Office represents defendant United States of America (“United States”) in the above-referenced action brought by *pro se* Plaintiff Nikolay Levinson (“Plaintiff”), in which he asserts claims under the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346(b), 2671 *et seq.*, and the *Bivens* doctrine. I write to respectfully request a 30-day adjournment of the initial conference currently scheduled for June 2, 2021 at 2 p.m., and a 30-day adjournment of the United States’ deadline to file its Proposed Case Management Plan for Pro Se Cases. This adjournment is requested because the summons and complaint have not been served on defendants, and because my Office is presently engaged in determining whether it will represent the individual defendants in this case.

On January 29, 2021, Judge Caproni entered an Order of Service directing the Clerk of Court to issue summonses and deliver to the U.S. Marshals Services “all the paperwork necessary for the Marshal Service to effect service upon [all] defendants.” ECF No. 10. On February 3, 2021, a minute entry posted to the docket confirmed that the Fed. R. Civ. P. Rule 4 service package and Order of Service had been hand delivered to the Marshals Service. However, no affidavit of service has been filed to date, and it does not appear that defendants were served. As of yesterday, my Office’s internal records do not reflect that we were served¹, and defendants Bureau of Prisons (“BOP”), Correction Officer Torres, and Yoon Kang indicated that they had not been served. Defendant Mandeep Singh could not be reached.

We are sensitive to the fact that Plaintiff is currently incarcerated and with limited means to effect service. Nevertheless, proper service of a summons and complaint must occur before my Office can represent individuals in a *Bivens* action. Service will also commence defendants’ time to respond to the complaint. Although the Marshals Service maintains that it has served all defendants in this action, it confirmed in email correspondence yesterday that it would re-serve any defendants who have not received a copy of the complaint.

¹ My Office received a copy of the complaint by mail on April 5, 2021 from the Clerk of Court. However, this mailing appears to be in response to the Court’s March 31, 2021 Order Scheduling Initial Case Management Conference which directed the Clerk of Court to mail a copy of the scheduling order and complaint to my Office. ECF No. 17. This does not constitute service.

We also request an adjournment to permit sufficient time to determine representation of the individual defendants in this action. Before representing any individual in a *Bivens* action, my Office must engage in a process to obtain authority from the U.S. Department of Justice. This process can be lengthy and requires multiple levels of review and approval. While already underway, the failure to serve defendants has delayed the process and additional time is needed to obtain the necessary approvals.

In light of these concerns, this Office is not presently in a position to file a proposed case management plan or appear on behalf of defendants at the initial conference scheduled for next week. Accordingly, the United States respectfully requests a 30-day adjournment of the initial conference from June 2 to July 2, 2021, a 30-day adjournment of its deadline to file a proposed case management plan from May 26 to June 25, 2021, and an order directing the Marshals Service to file an affidavit of service once service is complete. This is the United States' first request for an adjournment.

We thank the Court for its consideration of this matter.

Respectfully,

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

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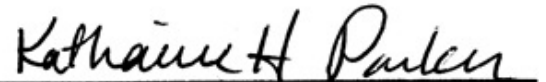
Cc: Nikolay Levinson
Plaintiff Pro Se
#713775C
Bayside State Prison
P.O. Box F01
Leesburg, NJ 08327

APPLICATION GRANTED: The telephonic Initial Case Management Conferences in this matter scheduled for Wednesday, June 2, 2021 at 2:00 p.m. is hereby rescheduled to **Monday, July 26, 2021 at 12:00 p.m.** It is hereby ORDERED that the Warden or other official in charge of the Bayside State Prison produce plaintiff Nikolay Levinson., Inmate Number 713775C, on July 26, 2021, no later than 12:00 p.m., to a suitable location within the Bayside State Prison that is equipped with a telephone, for the purpose of participating by telephone in a conference with the Court and defendants' counsel. If the scheduled time and date presents a hardship, the Warden or the Warden's designee should promptly inform chambers by calling (212) 805-0234. The Parties are directed to review Judge Parker's Individual Rules of Practice in Civil Cases attached to this order. Plaintiff should submit the Proposed Case Management Plan for Pro Se Cases and mail it to the Pro Se Intake Unit, U.S. District Court, 500 Pearl Street Room 200, New York, New York 10007 one week before the scheduled conference. Defendants' counsel must: (1) send this Order to the Warden immediately; (2) contact the Bayside State Prison to arrange the call and determine the telephone number at which the plaintiff will be reachable at the above time and date; (3) complete the Proposed Case Management Plan For Pro Se Plaintiffs and e-mail it to Parker_NYSDChambers@nysd.uscourts.gov, and (4) call Judge Parker's teleconference line at the scheduled time with the Plaintiff already on the phone. Please dial (866) 434-5269, Access code: 4858267.

The Defendant is directed to notify an Official at the Bayside State Prison that this proceeding has been rescheduled.

The Clerk of Court is requested to mail a copy of this order to the plaintiff.

APPLICATION GRANTED

A handwritten signature in black ink, appearing to read "Katharine H. Parker", written over a horizontal line.

Hon. Katharine H. Parker, U.S.M.J.

05/26/2021